

feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property. That section also requires a state to maintain a record of all reported incidents. One state reported that it already has a requirement for criminal background checks and a law requiring that facilities report allegations of abuse and neglect. Other commenters suggested language changes to the text. One commenter noted that § 483.160(c) is inconsistent with § 488.335, which requires a state to review all allegations of resident neglect, abuse, and misappropriation of property, and follow procedures in § 488.332. Section 488.332 requires a state to establish procedures to investigate complaints of participation requirements.

*Response:* We agree with the commenter regarding requirements in proposed § 483.160(c). Paragraph (c) is unnecessary because it repeats certain provisions of existing § 488.335. Since § 488.335 already establishes state requirements for review of allegations of neglect, abuse, misappropriation of property, and procedures for investigation of complaints and hearings, we are removing proposed paragraph (c) in § 483.160.

#### *Definition of Paid Feeding Assistant*

*Comment:* Many commenters objected to the term, feeding assistant, saying that it has a pejorative connotation and it lacks sensitivity to the elderly. Others thought that the term failed to include the importance of fluid intake. Commenters suggested a variety of alternatives, including the following: meal assistant; food and hydration aide or assistant; nourishment aide, nutrition assistant, nutritional aide, nutrition-hydration assistant; dining assistant; and resident assistant.

*Response:* The commenters make a good point, which we had not recognized when drafting the proposal. However, the term, feeding assistant, was widely used by states and organizations before our proposal. Rather than change the term in the regulations, we suggest that facilities and states use whatever term they prefer.

#### **IV. Provisions of the Final Regulations**

For the most part, this final rule incorporates the provisions of the proposed rule. The following provisions of this final rule differ from the proposed rule:

- We are reorganizing and revising § 483.35(h) so that paragraph (h)(1) applies to State approval of training courses for feeding assistants. We are adding the requirement that a feeding

assistant must successfully complete a State-approved training course, and do so before feeding residents.

- Also, in revised § 483.35(h)(1), we are clarifying that a facility may use a paid feeding assistant if it is consistent with State law.
- In revised § 483.35(h)(2), we are revising the supervision requirement to remove the word, "direct," from the phrase, "direct supervision."
- Also, in revised § 483.35(h)(2), we are removing the requirement that a supervisory nurse be in the unit or on the floor where the feeding assistance is furnished and is immediately available to give help, if necessary. In place of that sentence, we are adding the requirement that a feeding assistant call a supervisory nurse for help during an emergency on the resident call system.
- In revised § 483.35(h), we are adding a new paragraph (3) concerning resident selection criteria to replace proposed § 483.35(h)(1)(ii). In new paragraph (3), we are replacing the term, "clinical condition" with the phrase, "complicated feeding problem."
- In § 483.35, we also specify that a complicated feeding problem includes, but is not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral/IV feedings.

- Also, in § 483.35, we provide that a facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care.

- In § 483.160(a), we are adding a requirement that the State-approved training course include a minimum of 8 hours of training covering the topics listed in § 483.160(a).

- In § 483.160(c), we are removing the requirement that a facility report to the State all incidents of a paid feeding assistant who has been found to neglect or abuse a resident, or misappropriate a resident's property, and that a State must maintain a record of all reported incidents. This paragraph unnecessarily duplicates existing requirements in § 488.335, Action on complaints of resident neglect and abuse, and misappropriation of resident property.

#### **V. Collection of Information Requirements**

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(A) of the Paperwork Reduction

Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Nursing homes in two States currently use feeding assistants and eight other States have expressed an interest in implementing this policy. While public comments from nursing homes and provider organizations indicated strong support for the use of feeding assistants, only 13 States responded to the proposal. Some States indicated interest and others had concerns about the cost of implementation and other issues, so we do not now have a better idea of how many States will choose to approve the use of feeding assistants in nursing homes. In addition, it remains a facility option, so we still do not know how many facilities in which States will choose this option, nor do we know how many feeding assistants would be used by each facility. There are approximately 17,000 nursing homes in the nation, and they are not evenly distributed within States. Wisconsin reported that about 25 percent of nursing homes in the State used feeding assistants. On a nationwide basis, we believe that it is reasonable to project that 20 percent of facilities will use feeding assistants. We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

##### *Section 483.160(b)*

#### **1. Requirement**

A facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants.

#### **2. Burden**

We estimate that 20 percent of nursing homes may implement this policy (20 percent of 17,000 = 3,400 facilities/respondents). If we assume that each facility will hire two feeding assistants, this results in a total of 6,800 feeding assistants. Depending on the method chosen by a facility to collect this information, we believe that each facility (respondent) would spend no more than 30 minutes per month (6 hours per year) entering feeding assistant information into its record-